In the High Court of Punjab and Haryana at Chandigarh.

C.R.No. 5593 of 2006
Date of decision:5.12.2006

Dhan Singh ---Petitioner

Vs.

Darshan Lal and another ---Respondents

Coram: Hon'ble Mr. Justice S.N.Aggarwal

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Present: Mr. V.B.Aggarwal, Advocate,
for the petitioner.

Mr. Pritam Saini, Advocate,
for the respondents.

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S.N.Aggarwal, J.(Oral)

Dhan Singh-petitioner had filed a civil suit for mandatory injunction. It was alleged by him that some trees planted by the respondents in his land on the boundary between their fields were causing damage by its shadow etc. to the crops sown by the petitioner in his land. Hence, it was prayed that the respondents be directed to cut and remove those trees and damages were also claimed. In the alternative, it was prayed that the petitioner be permitted to cut and remove half of the trees standing there. On the other hand, the respondents took the plea that the petitioner has encroached upon a part of their property and dismissal of the suit was prayed without making any counter claim.

On the application filed by the petitioner, a Local

Commissioner was appointed by the learned trial Court for inspection of the spot and giving report regarding the number of trees standing in Khasra Nos.401, 402, 403, 404 and 405 of Khewat No. 52 min 247 Khatauni No. 83 situated in village Bhaini, Tehsil Thanesar District Kurukshetra, there nature and effect on the land of the petitioner. The said Local Commissioner visited the spot and submitted his report dated 21.5.2002 (Annexure P-2). Thereafter, the respondents filed an application for appointment of Local Commissioner for demarcation of the land comprised in Khasra Nos. 401 to 405. The learned trial Court vide impugned order dated 13.10.2006 had accepted this application and Halqa Kanoongo was appointed as Local Commissioner to demarcate Khasra No. 401 to 405 and to report about the encroachment allegedly made by the petitioner.

Hence, the present revision petition by the petitioner.

The submission of the learned counsel for the petitioner was that the suit was filed by him only for the removal of the trees so that the crops of the petitioner sown in his own land do not get damaged by the shadow of these trees. Therefore, the question of demarcation of the land did not arise. It was also submitted that the respondents had alleged in the written statement that their land had been encroached upon by the petitioner but no counter claim was set up by them in the written statement. Only dismissal of the suit was prayed. It was also submitted that when the Local Commissioner was originally appointed by the learned trial Court, no such prayer was made by the respondents that the Local Commissioner be also directed to demarcate the land nor any such objections were filed after the Local Commissioner submitted the report. When last opportunity was granted to the respondents for producing and closing their evidence they

succeeded in seeking adjournment by filing the application for the appointment of the Local Commissioner, which has been accepted by the learned trial Court vide impugned order dated 13.10.2006 which is not required for deciding the controversy involved in this civil suit.

On the other hand, submission of the learned counsel for the respondents was that this Court cannot exercise its jurisdiction for disturbing an order passed by the learned trial Court under Order 26 Rule 9 CPC. Reference was made to the Full Bench judgment of this Court in **Pritam Singh and another vs. Sunder Lal and others** 1990(2) SLJ 636. This judgment does not apply to the facts of the present case. The Hon'ble Full Bench has held in this case that revision petition is not maintainable against the order passed by the learned trial Court under Order 26 Rule 9 CPC declining to appoint a Local Commissioner, as the said order does not adjudicate the rights of the parties. But in the present case, the revision petition was filed against an order appointing the Local Commissioner for demarcating the land for which no relief was claimed in the pleadings either by the petitioners or by the respondents.

On the other hand, learned counsel for the petitioner placed reliance on the judgment of this Court reported as **Ajit Singh Vs. Sulakhan Singh** 2004(1) Civil & Rent Judicial Reporter 479 in which it was held that any interlocutory order passed by the Courts below can be examined by this Court in its revisional jurisdiction under Article 227 in order to ensure that irreparable injury is not caused to a party or that the order is not arbitrary, perverse or capricious. But in the present case, the order appointing the Local Commissioner demarcating the land is beyond the scope of controversy requiring determination in this case. The respondents have not

made any counter claim for getting the alleged encroachment vacated from the petitioner. Therefore, the appointment of Local Commissioner was beyond the scope of controversy involved in this civil suit. This order is accordingly held to be uncalled for and is set aside.

This revision petition is accepted.

(S.N.Aggarwal)
Judge

December 5 2006
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